

STATE OF MICHIGAN
COURT OF APPEALS

GARY R. NAUMANN,

Plaintiff-Appellant,

v

DARLENE B. NAUMANN,

Defendant-Appellee.

UNPUBLISHED

March 13, 2007

No. 266273

Wayne Circuit Court

LC No. 04-407114-DO

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from the property settlement of a judgment of divorce. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

When the court is called upon to divide the marital estate, it must do so in a manner that is equitable in light of all the circumstances. Each party need not receive a mathematically equal share, but significant departures from equality must be clearly explained. *Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997); *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). In reviewing a dispositional ruling, this Court reviews the trial court's findings of fact for clear error and then decides whether the dispositional ruling was fair and equitable in light of the facts. The dispositional ruling will be affirmed unless this Court is left with the firm conviction that it was inequitable. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995).

“[A]ssets earned by a spouse during the marriage, whether they are received during the existence of the marriage or after the judgment of divorce, are properly considered part of the marital estate. Generally, marital assets are subject to division between the parties, but the parties' separate assets may not be invaded.” *McNamara v Horner*, 249 Mich App 177, 183; 642 NW2d 385 (2002) (citations omitted). Property acquired before the marriage that increases in value by “wholly passive” appreciation rather than additional capital contribution or active management is to be excluded from the marital estate. *Dart v Dart*, 460 Mich 573, 585 n 6; 597 NW2d 82 (1999); *McNamara, supra* at 184; *Reeves v Reeves*, 226 Mich App 490, 496-497; 575 NW2d 1 (1997). In the case of rental properties in particular, this Court has held that the value of down payments and equity payments made before the marriage are to be excluded from the marital estate, but any “increase in [the equity] value (whether by equity payments or

appreciation) that occurred between the beginning and the end of the marriage” is part of the marital estate. *Reeves, supra* at 496.

When one spouse “significantly assists” in the acquisition, improvement, or growth of the other spouse’s separate asset, “the court may consider the contribution as having a distinct value deserving of compensation.” *Reeves, supra* at 495. Accord MCL 552.401; *Hanaway, supra* at 294. If, however, a separate asset such as a business does not appreciate in value during the time of the marriage, a spouse is not entitled to equitable restitution based on uncompensated services performed for that business. *Zerrenner v Zerrenner*, 474 Mich 1103; 711 NW2d 380 (2006).

The trial court found that the rental properties were acquired by plaintiff before the marriage. That finding is not clearly erroneous, it being undisputed that plaintiff purchased each of the properties many years before the marriage. The court further found that the properties increased in value in an aggregate amount of \$118,000. The parties do not dispute this finding. The court also found that any increase in the value of the properties was passive, presumably meaning that the increase in market values during the time of the marriage was the result of changes in the housing market rather than improvements to the properties themselves or work done by the parties. If that is the case, the trial court did not clearly err in finding that defendant’s contributions in managing the rental properties did not contribute to the increase in their value. However, the mere fact that the properties passively increased in value does not exclude their entire value from the marital estate.

In this case, both parties actively managed the rental business during the marriage, although plaintiff maintained sole ownership of the properties. Further, plaintiff’s equity interest in the properties presumably increased, given that he admitted that he carried mortgages and a land contract on which he made payments during the marriage. Thus, while the entire value of the properties may not be a marital asset, the increase in plaintiff’s equity in the properties during the marriage is a marital asset subject to distribution. *Reeves, supra* at 496. Therefore, the trial court erred in simply awarding defendant half the increase in the market value of the properties.

Accordingly, we reverse the trial court’s property settlement and remand for a determination whether plaintiff’s equity interest in the rental properties increased during the marriage and, if so, a division of that increased equity interest between the parties.

Reversed and remanded. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Bill Schuette